



Queensland Audit Office  
*better public services*

# Confidentiality and disclosure of government contracts

**Report 8: 2017–18**



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## Reference to comments

In accordance with section 64 of the *Auditor-General Act 2009*, we provided a copy of this report to the departments of Housing and Public Works; Premier and Cabinet; Natural Resources, Mines and Energy; Environment and Science; and State Development, Manufacturing, Infrastructure and Planning. In reaching our audit conclusions, we have considered their views and represented them to the extent we deemed relevant and warranted when preparing this report.

We received responses from the departments of Housing and Public Works; Premier and Cabinet; Natural Resources, Mines and Energy; Environment and Science; and State Development, Manufacturing, Infrastructure and Planning. The responses are in Appendix A.

## Report cost

This audit report cost \$285 000 to produce.

Your ref:  
Our ref: 2017-9158P



20 February 2018

The Honourable C Pitt MP  
Speaker of the Legislative Assembly  
Parliament House  
BRISBANE QLD 4000

Dear Mr Speaker

**Report to Parliament**

This report is prepared under Part 3 Division 3 of the *Auditor-General Act 2009*, and is titled *Confidentiality and disclosure of government contracts* (Report 8: 2017–18).

In accordance with s.67 of the Act, would you please arrange for the report to be tabled in the Legislative Assembly.

Yours sincerely

A handwritten signature in black ink, appearing to read 'B. Worrall', is written over a light grey horizontal line.

Brendan Worrall  
Auditor-General

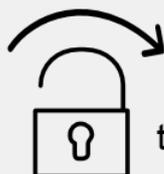
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## KEY FACTS



Queensland Government estimates its annual spend on essential goods and services as over \$14 billion\*



Government policy of open and transparent information



All reportable contracts valued at \$10 000 and over are to be disclosed\*\*



Over 56 000 contracts disclosed on Open Data alone as at September 2017\*\*\*



Multiple reviews and inquiries into integrity, accountability and transparency of government

Source:

\*Queensland Government Procurement Strategy 2017

\*\*Queensland Procurement Policy 2017

\*\*\*Queensland Government data—Queensland Government contracts directory—awarded contracts

## Audit objective and scope

In this audit, we examined the use of confidentiality provisions in Queensland Government contracts. We also assessed whether selected departments met contract disclosure requirements. The audit included the:

- adequacy of current guidance available to aid staff in these activities
- impact of these activities on accountability and transparency.

The audit scope included five departments:

- Department of the Premier and Cabinet
- Department of Housing and Public Works
- Department of Environment and Science
- Department of Natural Resources, Mines and Energy
- Department of State Development, Manufacturing, Infrastructure and Planning.

## Summary

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The Queensland Government has adopted a model of openness through the routine release of information to the public. The government aims to make information available to the public as a matter of course, unless there are compelling reasons for keeping it confidential.

The primary objective of the *Right to Information Act 2009* is to:

... give a right of access to information in the government's control unless, on balance, it is contrary to the public interest to give that access.

In keeping with the policy of open information and the *Right to Information Act 2009*, parliament and members of the public should have access to government contract information unless there is a sound reason not to. This includes government contracts for the procurement of goods and services. The public has a right to know how much public money government is spending, on what, and with which vendors.

### Confidentiality provisions

While confidentiality provisions are required for government to protect sensitive information for itself and its stakeholders, inappropriate use can reduce transparency and public trust in government.

Contracts can include one or both types of confidentiality provisions—general and specific. General provisions set out a general understanding between the parties on how they will deal with information when performing the contract. Most government contracts contain standard general confidentiality provisions which do not preclude agencies from publicly reporting the required contract information.

Specific confidentiality provisions make specific information contained in a contract, or information obtained or generated in carrying out the contract, confidential. This doesn't usually prevent agencies from disclosing the required contract details. In these cases, the agency must specifically identify the information considered confidential and record the reason for non-disclosure of this specific information.

The Office of the Chief Advisor—Procurement, within the Department of Housing and Public Works, produced the *Procurement Guidelines—Contract Disclosure*. These guidelines reinforce the model of an open and transparent government by stating:

Confidentiality and commercial in confidence clauses should not be used as a matter of course and only included where there is strong justification for confidentiality.

### Disclosure requirements

The *Queensland Procurement Policy 2017* requires agencies to publish basic details for awarded contracts valued at \$10 000 and over, and additional contract details for awarded contracts valued at \$10 million and over. The *Procurement Guidelines—Contract Disclosure* requires affected agencies to disclose certain types of contracts publicly. Affected agencies include departments, large statutory bodies and special purpose vehicles.

The *Procurement Guidelines—Contract Disclosure* require agencies to report awarded contracts valued at \$10 000 or more in the QTenders system. However, some agencies also currently report awarded contracts or transactional reporting of invoices and purchase orders of value \$10 000 or more in the Queensland Contracts Directory. Agencies (through the Office of the Chief Advisor—Procurement) also report some contract information on Queensland Open Data. Figure A shows the three contract disclosure systems that are available to agencies, including the source of the data, and who administers the system.

**Figure A**  
**Contract disclosure systems available to agencies**

Contract disclosure system	Source of data	Type of data disclosed	System administrator
QTenders	<ul style="list-style-type: none"> <li>Contract award through QTenders</li> <li>Manual input by agencies</li> </ul>	Full contract details	Department of Housing and Public Works' Office of the Chief Advisor—Procurement
Queensland Contracts Directory	<ul style="list-style-type: none"> <li>Insights Data Warehouse</li> <li>Manual input by agencies</li> </ul>	Transactional data Full contract details	Department of Housing and Public Works' Office of the Chief Advisor—Procurement
Queensland Open Data	<ul style="list-style-type: none"> <li>Queensland Contracts Directory</li> </ul>	Transactional data Full contract details	Queensland Government Chief Information Office

Source: Queensland Audit Office.

To assess the confidentiality and disclosure of government contracts, we examined the adequacy of current systems and guidance available to all affected agencies. We then examined a sample of contracts for five departments.

## Audit conclusions

We set out to assess the extent and appropriateness of the use of confidentiality provisions in Queensland Government contracts. However, we were unable to do this because the five audited departments' contract registers lacked sufficient information.

While most Queensland Government contracts contain general confidentiality provisions, we identified only a few examples of contracts containing specific confidentiality provisions at the five departments we audited. This was because the departments did not record whether contracts used specific provisions. And for those we did identify, the departments did not document the reasons for including them—meaning there is a lack of evidence that staff have conducted an assessment to justify the need. We also found that none of the five departments had a complete record of all their contracts. The departments' deficiencies in contract record keeping means that no one can determine the extent of the use of confidentiality provisions in Queensland Government contracts.

In terms of disclosing awarded contracts, the Queensland Government clearly communicates its commitment to being open and transparent in its policies and principles. The Office of the Chief Advisor—Procurement's guidance clearly sets out the requirements for what agencies should disclose regarding reportable contracts. But their process is less clear for where and how these disclosures should occur. This leads to confusion among agencies on how to discharge their responsibilities. As a result, a number of the departments we examined are falling short in disclosing awarded contracts in accordance with the Queensland Government's reporting requirements.

Of the 90 contracts we examined, they:

- appropriately disclosed only 25 per cent
- did not disclose 21 per cent at all
- partially disclosed the remaining 54 per cent.

This is mainly due to incomplete records, multiple systems and, in some cases, a lack of awareness or misinterpretation of disclosure requirements. This, and a lack of data validation, has led to both duplicate and missing disclosures, resulting in unreliable publicly reported data.

This is exacerbated by confusion in the disclosure guidelines about how and where agencies must disclose contract information. Also, the departments' ambiguous processes and systems are not fully effective, and prevent them from fully meeting disclosure requirements. They are not delivering on the government's commitment to be open and transparent about awarded contracts.

## Summary of audit findings

### Using confidentiality provisions in contracts

Contracts can include general and specific confidentiality provisions. Figure B explains what these two types of provisions cover and what agencies must report or record if they use them.

**Figure B**  
Types of confidentiality provisions

Type of provisions	Explanation	Reporting and recording requirements
General confidentiality provisions	<ul style="list-style-type: none"> <li>▪ restate legislative obligations for confidentiality (such as under the <i>Information Privacy Act 2009</i> or a secrecy provision); or</li> <li>▪ set out a general understanding between the parties in relation to how they will deal with information when performing the contract</li> </ul>	<ul style="list-style-type: none"> <li>▪ do not prevent agencies publicly reporting required contract information</li> <li>▪ agencies do not need to record use of general provisions</li> </ul>
Specific confidentiality provisions	<p>protect the confidentiality of:</p> <ul style="list-style-type: none"> <li>▪ all or part of the contract itself—such provisions would only be necessary where the contract needs to specify the information that the entity has determined is confidential; or</li> <li>▪ information obtained or generated in performing the contract</li> </ul>	<p>agencies must:</p> <ul style="list-style-type: none"> <li>▪ specifically identify and document the information considered confidential</li> <li>▪ record the reason for non-disclosure of this specific information</li> </ul>

Source: Queensland Audit Office.

Queensland Government agencies use general confidentiality provisions as a standard in most contracts. These provisions appropriately cover how the related parties will keep information confidential. Their use does not preclude agencies from publicly reporting the required contract information. The *Right to Information Act 2009* states that agencies must provide access to a document unless it contains exempt information or its disclosure would, on balance, be contrary to public interest.

Specific provisions are specifically tailored for an individual contract. Examples of specific confidentiality provisions include:

- supplier's confidential intellectual property during the performance of the contract
- supplier access to sensitive security information to perform the requirements of the contract
- new confidential intellectual property created during the contract
- confidential report dealing with sensitive public interest issues.

Such clauses can be used to protect commercial information that an agency has determined is confidential or to protect government material. If agencies include specific confidentiality provisions in a contract, they must identify what information is confidential and justify their reasons why. Most of the departments we audited do not have a complete record of all their contracts. None of the departments record whether contracts have specific confidentiality provisions in them, and the justification for their use. We were therefore unable to readily identify contracts that included specific confidentiality provisions and confirm that the departments had appropriately documented the reasons for their decisions.

None of the departments we examined demonstrated that they had identified and mitigated the risk of the disclosure of confidential information. They did not set clear expectations within their contract management plans of how to effectively manage the risk that departments may breach confidentiality. We previously addressed this deficiency with a recommendation in *Report to Parliament 10: 2013–14—Contract management: renewal and transition*.

Poor record keeping prevents anyone from determining the extent of the use of confidentiality provisions in government contracts. Departments need to improve their contract registers and management systems for this to happen.

There is a lack of guidance on the appropriate use of both general and specific confidentiality provisions in contracts. This may lead agencies to incorrectly classify what specific information is confidential or to make the wrong decisions about when to appropriately use confidentiality provisions.

The Office of the Chief Advisor—Procurement, responsible for whole-of-government guidance supporting the *Queensland Procurement Policy*, does not provide specific guidance for the use of confidentiality provisions in contracts. This is different from other jurisdictions like the Australian Government, which provides useful criteria and examples to its agencies. None of the departments we examined had specific training or guidance materials available to all affected staff on how to use confidentiality provisions in contracts. However, we found the departments appropriately relied on legal advice for guidance, particularly for high risk contracts.

## Disclosing contract information

The departments we examined had fully disclosed only a quarter of the 90 contracts in our selection (these were disclosed on QTenders). They had not disclosed around 21 per cent of contracts at all; nor had they documented the reasons for non-disclosure.

Departments had partially disclosed more than half of the contracts on one or more of the three available systems, but they did not meet full disclosure requirements. They either missed basic details, or reported only transactional value instead of the full contract value.

As a result, the Queensland Government does not have a complete record of awarded contracts. In some cases, departments are misinterpreting how confidentiality provisions prevent disclosure. Mostly though, we found partial or non-disclosure was more due to incomplete contract records, multiple contract systems and, in some cases, a lack of awareness of disclosure requirements.

Departments do not record enough information about the partial or non-disclosure of reportable contracts, which is a disclosure requirement. We found that departments whom operate a decentralised procurement structure were more prone to not disclose contracts, due to a lack of oversight.

Agencies are using different systems to report contract information. While the *Procurement Guidelines—Contract Disclosure* states agencies should use QTenders for reporting, the Office of the Chief Advisor—Procurement allows for transactional reporting in the Queensland Contracts Directory. Agencies use transactional data to meet disclosure requirements because they do not have a complete record of all their contracts. Agencies (through the Department of Housing and Public Works) also report some contract information on Queensland Open Data. This contributes to the lack of a complete record of all awarded contracts above the \$10 000 nominated threshold.

## Recommendations

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### Department of Housing and Public Works

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We recommend that the Department of Housing and Public Works' Office of the Chief Advisor—Procurement:

1. improves guidance and training available to agencies on the use of confidentiality provisions and disclosure of contracts

The enhancements should include guidance on:

- the appropriate use and recording of confidentiality provisions (Chapter 2)
- when partial or non-disclosure of reportable contracts is appropriate. (Chapter 3)

### Whole-of-government

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We recommend that the Department of Housing and Public Works in consultation with the Department of the Premier and Cabinet, and other relevant departments:

2. determine the most appropriate place and process to disclose reportable contracts to achieve the desired outcome of providing a complete and accurate public record of awarded contracts

The enhancements should include:

- reporting all *Procurement Guidelines—Contract Disclosure* minimum reporting requirements (Chapter 3)
- the ability for agencies to record when and why they have used specific confidentiality provisions. (Chapter 3)

### All agencies

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We recommend that all agencies:

3. meet all mandatory requirements set out in *Procurement Guidelines—Contract Disclosure*

This includes ensuring that:

- agency procurement policies and procedures include these requirements for contract disclosure (Chapter 3)
- disclosure requirements are communicated to and enacted by officers undertaking procurement activities (Chapter 3)

4. improve their contract registers or contract management systems to ensure a complete record of all awarded contracts

The enhancements should include:

- consolidating all contracts in one record, or where a decentralised model is elected, maintaining this information in a consistent format so that it can be consolidated (Chapter 3)
- documenting whether a contract has specific confidentiality provisions and the reasons for their use (Chapter 2)
- documenting reasons for non-disclosure of contracts. (Chapter 2)

# 1. Context

This chapter provides background to the audit and context relevant to the audit findings and conclusions.

## Accessing information

The government has adopted a model of open and transparent government with proactive and routine release of information. The government aims to make information available to the public as a matter of course, unless there are good reasons for keeping it confidential.

The routine release of information to the public includes government contracts for the procurement of goods and services. The general principle is that agencies should not protect information in government contracts as confidential unless there is a good reason to do so.

Guidelines supporting the *Right to Information Act 2009* state that, where possible, agencies should disclose government-held information through informal means like an agency's website, publication scheme, or through administrative release. The advantages of this are that it:

- puts information into the community faster and at lower cost
- reduces agency time and resources spent processing individual information requests
- demonstrates a commitment to openness, accountability and transparency which, in turn, may increase confidence in government.

## Contract disclosure policies and guidelines

This section explains the relevant policy and guidelines that set the standards for disclosure and accountability. They include:

- *Queensland Procurement Policy 2017*
- *Procurement Guidelines—Contract Disclosure*.

Collectively, these documents aim to help affected agencies understand the requirements for disclosing awarded contracts, including those that may contain confidentiality provisions. Affected agencies include departments, large statutory bodies and special purpose vehicles.

## Queensland Procurement Policy

The *Financial and Performance Management Standard 2009* requires all accountable officers of departments and statutory bodies to comply with the Queensland Procurement Policy.

The Department of Housing and Public Works recently released an updated policy with an effective date of 1 September 2017, to replace the *Queensland Procurement Policy 2013*. The *Queensland Procurement Policy 2017* is the government's overarching policy for the procurement of goods and services. It establishes a framework that aims to maximise benefits delivered through procurement.

The policy includes six principles that departments (and other in-scope public sector agencies) must apply. It also includes details on how they should apply each principle. The policy's six principles are:

1. putting Queenslanders first when securing value for money
2. advancement of economic, environmental and social objectives
3. integrity, probity and accountability
4. leaders in procurement practice
5. working together to achieve outcomes
6. governance and planning.

Principle three is key to the use of confidentiality provisions in contracts. Figure 1A shows an extract of the policy requirements relevant to the confidentiality and disclosure of government contracts.

**Figure 1A**  
An extract from principle three—integrity, probity and accountability

Principle number	Requirement	Applies to
3.1	Agencies will: <ul style="list-style-type: none"> <li>▪ observe applicable legislation, policies, agreements and industrial instruments.</li> <li>▪ ensure that appropriate governance mechanisms are in place to maintain the integrity of the procurement decision-making process</li> <li>▪ ensure all stages of the procurement process are defensible and appropriately documented relative to the value and risk associated with the procurement. Decisions will withstand public scrutiny and preserve confidence in the procurement process.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Departments</li> <li>▪ Statutory bodies</li> <li>▪ Government-owned corporations</li> </ul>
3.3	Agencies will publish basic details for awarded contracts valued at \$10 000 and over, and additional contract details for awarded contracts valued at \$10 million and over, in accordance with the <i>Procurement Guidelines—Contract Disclosure</i> , issued by the Director-General, Department of Housing and Public Works. The publishing of the procurement method used is mandated for contracts valued at \$500 000 and over.	<ul style="list-style-type: none"> <li>▪ Departments</li> <li>▪ Large statutory bodies</li> <li>▪ Special purpose vehicles</li> </ul>

Source: Queensland Procurement Policy 2017.

## Procurement Guidelines—Contract Disclosure

The Department of Housing and Public Works issued the *Procurement Guidelines—Contract Disclosure* in 2013 and revised them in 2017 (with minor amendments). The guidelines help affected agencies to understand how they are required to disclose details of awarded contracts under Principle 3.3 of the *Queensland Procurement Policy 2017*.

The *Procurement Guidelines—Contract Disclosure* reinforce the government's commitment to open and transparent government by stating:

Confidentiality and commercial in confidence clauses should not be used as a matter of course and only included where there is strong justification for confidentiality.

The guidelines refer to mandatory requirements that arise from obligations under the *Queensland Procurement Policy 2017*. The guidelines provide affected agencies with the information necessary to develop systems to meet minimum standards for disclosure.

Figure 1B shows the mandatory requirements set out in *Procurement Guidelines—Contract Disclosure*. Affected agencies must ensure that their agency procurement procedures include these requirements for contract disclosure.

**Figure 1B**  
***Procurement Guidelines—Contract Disclosure: mandatory requirements***

Category	Mandatory requirements
Disclosure methods	Affected agencies must have validation procedures to ensure they disclose accurate, meaningful and appropriate information in accordance with these guidelines.
Information affected agencies must publish on QTenders website	<p>Basic reporting details for reportable contracts of \$10 000 and over:</p> <ul style="list-style-type: none"> <li>▪ name and address of agency procuring the contract</li> <li>▪ description of the goods or services procured</li> <li>▪ date of award or contract date</li> <li>▪ value of the contract or standing offer arrangement</li> <li>▪ name and address of the successful supplier</li> <li>▪ procurement method used (for contracts of \$500 000 or greater).</li> </ul> <p>Additional reporting details for reportable contracts of \$10 million and over:</p> <ul style="list-style-type: none"> <li>▪ identifying details (reference information for the offer and contract)</li> <li>▪ number of offers sought</li> <li>▪ evaluation criteria and weightings</li> <li>▪ form of contract</li> <li>▪ deliverables</li> <li>▪ contract milestones</li> <li>▪ contract performance management.</li> </ul>
Contract reporting criteria	<p>Affected agencies must:</p> <ul style="list-style-type: none"> <li>▪ identify reportable contracts</li> <li>▪ disclose basic details on the QTenders site within 60 days for reportable contracts of \$10 000 and over</li> <li>▪ disclose additional details on the QTenders site within 60 days for reportable contracts of \$10 million and over.</li> </ul>
Making decisions about disclosure	<p>Affected agencies must have or provide:</p> <ul style="list-style-type: none"> <li>▪ validation processes to review contract details prior to publication, to ensure they publish appropriate information within the required timeframes</li> <li>▪ guidance to assist procurement officers in making decisions about disclosure of contract details</li> <li>▪ instructions on how to access advice from Right to Information or Privacy decision makers within the agency, or the agency's legal advisors for complex disclosure matters</li> <li>▪ conditions of offer and contract that clearly specify that they will publish certain information on the QTenders website</li> <li>▪ terms and conditions that clearly specify that potential suppliers indicate within their offers, where they have substantial concerns that disclosure may reveal trade secrets or information of commercial value.</li> </ul>
Recording reasons for non-disclosure	<p>Affected agencies must:</p> <ul style="list-style-type: none"> <li>▪ document the reasons for not disclosing all or part of a contract details for individual reportable contracts of \$10 000 and above</li> <li>▪ document on the QTenders record where an element of the basic or additional details is not published</li> <li>▪ document the reasons in internal agency records where no QTenders record is published</li> <li>▪ implement a system that provides an effective audit trail for tracking and recording contracts that meet the contract reporting criteria, and for which either no information, or partial information, is disclosed.</li> </ul>

Source: Department of Housing and Public Works' *Procurement Guidelines—Contract Disclosure*.

## Types of contracts and confidentiality provisions

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### Contracts

The Department of Housing and Public Works' *Procurement Guidelines—Contract Disclosure* state that under law, types of contracts include:

- contracts under seal (also known as deeds)
- simple contracts (can be oral, written, or a combination of both).

### Reportable contracts

The guidelines attach specific reporting requirements to reportable contracts.

A reportable contract is a contractual document that satisfies the elements of a legally binding contract that is valued at \$10 000 or greater. This includes contracts formed under standing offer arrangements (panel arrangements). Appendix C includes examples of what are and are not reportable contracts.

### Confidentiality provisions

Affected agencies must treat all tenders as confidential for the duration of the procurement process. Similarly, they may keep tenders confidential after the award of the contract. However, this does not preclude agencies from reporting the required details of the awarded contract on QTenders in line with *Procurement Guidelines—Contract Disclosure*.

Contracts can include the following types of confidentiality provisions:

- general confidentiality provisions, which either restate legislative obligations for confidentiality (such as under the *Information Privacy Act 2009* or a secrecy provision) or set out a general understanding between the parties in relation to how they will deal with information when performing the contract
- specific confidentiality provisions, which protect the confidentiality of
  - all or part of the contract itself—such provisions would only be necessary where the contract needs to specify the information that the entity has determined is confidential; or
  - information obtained or generated in performing the contract.

Agencies should not agree to specific confidentiality provisions in contracts unless an assessment has determined that the information the provisions cover is confidential.

### Contract disclosure systems

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Affected agencies publish contract details online to meet their contract disclosure obligations. Agencies report awarded contracts using one or both of the following two systems:

- QTenders—a system for tendering and disclosing awarded contracts of value \$10 000 or more
- Queensland Contracts Directory—where agencies report awarded contracts or transactional reporting of invoices and purchase orders of value \$10 000 or more.

In addition, the Department of Housing and Public Works' Office of the Chief Advisor—Procurement biannually aggregates data from the Queensland Contracts Directory and publishes it on the Queensland Open Data portal.

Each of these systems are websites accessible to the public that aim to increase the transparency and accountability of Queensland Government procurement activities. The Department of Housing and Public Works administers two of these systems—QTenders and Queensland Contracts Directory—on behalf of the whole of government. The Queensland Government Chief Information Office administers the Queensland Open Data portal.

## QTenders

QTenders is the online tendering system for the Queensland Government. Agencies that award contracts through an open tender process on the QTenders system, publish the contract details on QTenders. Agencies that award contracts outside the tendering system, for example using a pre-established standing offer arrangement or direct offer process, can also publish the contract details on QTenders. They do this by completing a form in QTenders with the required information.

## Queensland Contracts Directory

The Queensland Contracts Directory is a website that provides information on procurement panel arrangements, called standing offer arrangements, available to departments and other Queensland Government agencies. It provides information such as buyer guides, schedules and pricing information. Some agencies publish details of awarded contracts on the Queensland Contracts Directory.

There is a link from the QTenders portal to the Queensland Contracts Directory.

Agencies can disclose awarded contract information on the Queensland Contracts Directory in two ways, by:

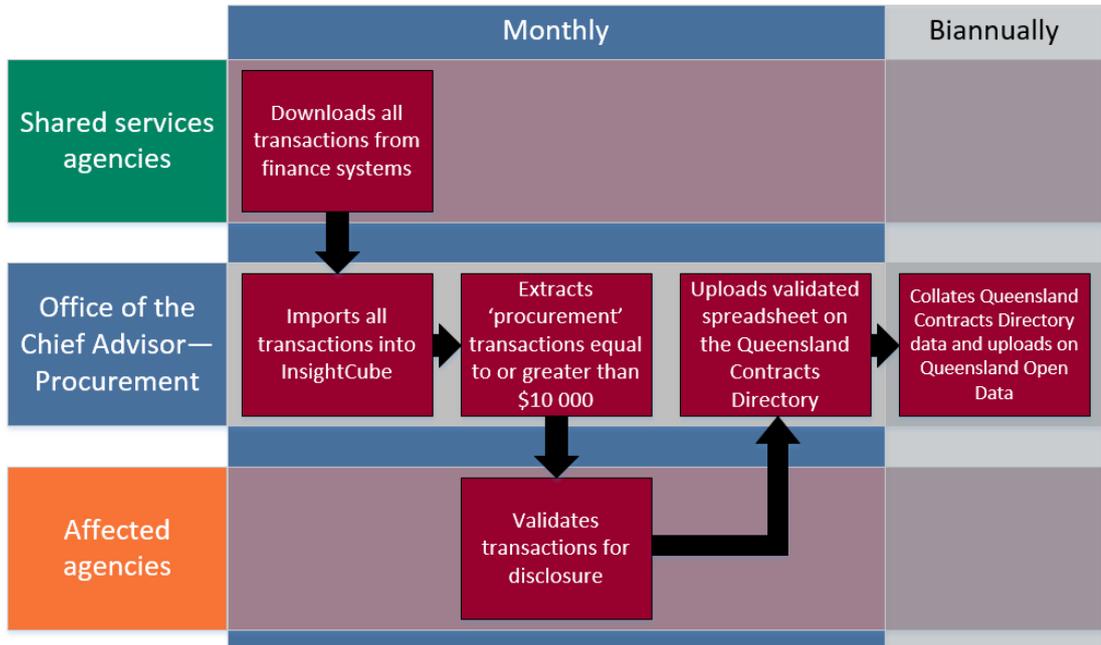
- providing their own contract information using a template the Department of Housing and Public Works provides. The template requires contract reporting information identified in the *Procurement Guidelines—Contract Disclosure*
- using transactional data from the Office of the Chief Advisor—Procurement's Insights Data Warehouse. This is a data warehouse of transactions from the financial systems for the majority of 'core' agencies. The Department of Housing and Public Works provides each agency with spreadsheets that list monthly transactions for each disclosing agency. Each agency must validate the data before the Office of the Chief Advisor—Procurement uploads it on the Queensland Contracts Directory.

## Queensland Open Data

Biannually, in March and September, the Office of the Chief Advisor—Procurement merges all validated contract disclosure data it has received from agencies and uploads it to the Queensland Open Data portal. This data does not include the disclosures on QTenders.

Figure 1C shows the steps involved for agencies to disclose contracts on the Queensland Contracts Directory and for the Office of the Chief Advisor—Procurement to publish merged disclosure data on Queensland Open Data.

**Figure 1C**  
Disclosure process using Office of the Chief Advisor—Procurement’s Insights Data Warehouse



Source: Queensland Audit Office.

## Roles and responsibilities

Figure 1D shows the roles and responsibilities within the Queensland Government for managing the use of confidentiality provisions in contracts and for contract disclosures.

**Figure 1D**  
Roles and responsibilities—Queensland Government procurement

Accountability	Authority	Relevant responsibilities
Office of the Chief Advisor—Procurement, Department of Housing and Public Works	<i>Queensland Procurement Policy 2017</i>	<ul style="list-style-type: none"> <li>ensuring policy, guidelines and guidance are appropriate, reflect better practice and facilitate a high standard of procurement performance</li> <li>providing expert procurement advice and support to agencies</li> <li>coordinating whole-of-government procurement capability building and training initiatives</li> </ul>
Budget sector agencies, government-owned corporations, statutory bodies and special purpose vehicles	<i>Financial and Performance Management Standard 2009</i> <i>Queensland Procurement Policy 2017</i>	<p>Accountable officers are responsible:</p> <ul style="list-style-type: none"> <li>under legislation for their own procurement activities</li> <li>for ensuring their agency follows the <i>Queensland Procurement Policy 2017</i>, including                             <ul style="list-style-type: none"> <li>undertaking contract disclosure</li> <li>undertaking a workforce approach to build procurement capability.</li> </ul> </li> </ul>

Source: Queensland Audit Office.

## Prior reviews in Queensland

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This section highlights prior reviews relevant to transparency of contract information, how public sector entities manage contracts, and the use of confidentiality provisions.

### Public Accounts Committee

In 2002, the Public Accounts Committee raised the potential for inappropriate and overuse of confidentiality clauses in its report *Commercial-in-Confidence Arrangements*. The report recommended that all public sector entities develop and adopt guidelines in relation to commercial-in-confidence consistent with principles that:

- information should be publicly available
- accountability and public interest should prevail
- commercial sensitivity of information decays with time
- commercial in-confidence clauses should be specifically tailored for each contract
- there is a cost to maintaining confidentiality.

Appendix D lists specific recommended guidelines for each of the five principles.

### Office of the Information Commissioner Paper Series

The Office of the Information Commissioner collaborated with the Australia and New Zealand School of Government on an occasional paper series to examine the impact of transparency.

The first paper, *Transparency and Public Sector Performance*, highlights that public service culture is entrenched with confidentiality and anonymity. It finds that legislation increasingly recognises public sector information as a community asset or national resource, with managers charged with achieving important economic, social and environmental goals effectively, efficiently, economically and ethically.

The paper on *Proactive Disclosure and Publication Schemes* identifies that the advantages of agencies increasing the flow of information out into the community:

- puts information into the community faster and at lower cost
- reduces agency time and resources spent processing individual information requests
- demonstrates a commitment to openness, accountability and transparency which, in turn, may increase confidence in government.

### Our previous reports

We have previously raised concerns relating to the management of contracts, including issues on transparency and accountability.

*Report to Parliament 3: 2012–13—Tourism industry growth and development* identified that the former Tourism Queensland's use of confidentiality provisions was questionable. We found the informality of Tourism Queensland's confidentiality agreements, including verbal agreements, meant there was little transparency and accountability regarding the public interest for these agreements.

*Report to Parliament 10: 2013–14—Contract management: renewal and transition* identified that the audited departments did not have the contract management skills and systems to manage all their contracts consistently to required standards. We also found that departments did not have a complete record of all their contracts, such as a centralised contract register.

*Report to Parliament 1: 2016–17—Strategic procurement* identified that because most departments record contract information on separate systems, and these systems do not record total contract spend, it was difficult to monitor the extent to which departments were using supply arrangements and contracts for their purchases. We also raised concerns about the scope of procurement training available and the low take-up of training by procurement officers.

## 2. Using confidentiality provisions

**This chapter covers the use of confidentiality provisions in contracts, including whether policies and guidance are available to assist agencies to make decisions about when it is appropriate to use them.**

### Introduction

The Queensland Government's Right to Information framework presumes that all documents, including contracts, are open to the public unless there are compelling reasons for non-disclosure. The reasons for non-disclosure relate to the need to keep certain information confidential.

Confidential information is any information with restrictions placed on communicating or disseminating information that is by its nature confidential. Any information considered confidential must be specifically identifiable and must not be common knowledge or be in the public domain. Accepted reasons for not disclosing specific information include where it could reasonably be expected to prejudice security, law enforcement and public safety, or the ordinary business of government.

We assessed whether departments appropriately use confidentiality provisions in contracts. Specifically, we looked at whether selected departments:

- appropriately document the reasons for using confidentiality provisions in contracts
- effectively monitor the use of confidentiality provisions and maintain contract information in accordance with requirements.

We also assessed the effectiveness of both whole-of-government and departmental policy and guidance to help agencies make decisions about using confidentiality provisions in Queensland contracts.

### Identifying contracts with confidentiality clauses

Agencies widely use general confidentiality provisions in their contracts to set out a general understanding between the parties on how they will deal with information when performing the contract. This does not preclude agencies from publicly reporting the required contract information. As standard practice across government, documenting reasons for using general confidentiality provisions has little benefit as it is the norm rather than the exception.

We were unable to readily identify contracts that included specific confidentiality provisions. This is because none of the five departments' contract registers we examined record which contracts contain these provisions. We also found that most of these departments do not have a complete record of all their contracts or a system that provides an effective audit trail for tracking and recording their contracts. As a result, they cannot monitor the use of confidentiality provisions in their contracts and determine the appropriateness of their use.

Until departments improve their contract management systems, no one can assess the extent of use of confidentiality provisions in government contracts. We previously highlighted the lack of effective contract management systems in *Report to Parliament 10: 2013–14—Contract management: renewal and transition*.

## Using specific and general confidentiality provisions

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The five departments we audited are not retaining sufficient information about their decision-making processes when it comes to the use of confidentiality clauses. We found no evidence that departments had considered the confidentiality of information on a case-by-case basis to identify any specific confidential information. This makes it difficult to assess whether departments are appropriately using confidentiality provisions in their contracts.

This relates to Principle 3.1 of the *Queensland Procurement Policy 2017* to:

ensure all stages of the procurement process are defensible and appropriately documented relative to the value and risk associated with the procurement. Decisions will withstand public scrutiny and preserve confidence in the procurement process.

We selected a sample of 17 contracts where we expected to find the departments had:

- demonstrated they had considered the need for specific confidentiality provisions on a case-by-case basis
- documented the reasons for using specific confidentiality provisions
- documented and monitored the risk of confidential information being disclosed.

Of the 17 contracts we examined, 15 had general provisions. However, we found no evidence that the departments had assessed the appropriateness of the standard terms and conditions from the contract templates to protect specific confidential information.

In the two contracts examined that contained specific confidentiality provisions, one did not specify the information deemed confidential or the justification for using a specific confidentiality provision. Because departments are not recording in their contract registers or contract management systems which contracts contain specific confidentiality provisions, we were unable to select a more representative sample. This means it was difficult to assess whether the departments used the provisions appropriately.

## Managing confidentiality contract risks

The *Queensland Procurement Policy 2017* requires agencies to have processes in place to manage contracts, including performance and renewal. For significant procurements, agencies should develop a contract management plan. A contract management plan is a useful tool for managing risks to the success of contracts, and for ensuring that suppliers deliver on the terms of the contract.

At the five departments we audited, not all contracts had a supporting contract management plan to manage risks, such as specific confidentiality provisions. For 15 of the 17 contracts examined in detail, we expected to find contract management plans that specified confidentiality requirements and actions to mitigate any risks to confidentiality. Just over half of the 15 contracts (eight) had developed contract management plans. This meant that they could not all demonstrate that they had adequately identified and mitigated the risk of the disclosure of confidential information.

In *Report to Parliament 10: 2013–14—Contract management: renewal and transition*, we reported that, even for relatively simple, low risk contracts, a contract management plan would help make sure that important obligations were not overlooked, and the intent of the contract would be achieved.

For contracts where there is a risk that departments may breach confidentiality, departments should document a clear expectation of how they will treat the risk to effectively manage these contracts. We previously addressed this deficiency with recommendation 2 of *Report to Parliament 10: 2013–14*, which states:

It is recommended that all departments develop and apply a risk/value matrix approach to:

- define expectations for effective contract management and establish supplier performance monitoring regimes to ensure value for money is realised with contracts
- allocate resources commensurate to the risk of contracts for efficient contract administration.

## Policies and guidance on confidentiality provisions

In Queensland, there is limited guidance to help agencies decide when it is appropriate to use confidentiality provisions in contracts. This contributes to why the departments audited are not adequately specifying what information is confidential or documenting the justification for using confidentiality provisions. Further guidance with criteria and examples will assist agencies in making the right decisions about the appropriate inclusion of confidentiality provisions in contracts and meet record-keeping requirements.

### Whole-of-government policies and guidance

The Office of the Chief Advisor—Procurement is responsible for ensuring policy and related guidelines are appropriate, reflect better practice and facilitate a high standard of procurement performance.

The *Procurement Guidelines—Contract Disclosure* includes:

- general information to guide disclosure decision-making based on public interest
- exemptions such as secrecy and security
- information that may prejudice the commercial or financial affairs of an entity such as unit pricing.

They refer affected agencies to their legal advisors, the *Right to Information Act 2009* and *Information Privacy Act 2009* when making decisions about disclosure.

However, the Office of the Chief Advisor—Procurement advised it did not develop the *Procurement Guidelines—Contract Disclosure* with the purpose of detailing information on confidentiality provisions. As a result, agencies lack central guidance that specifically refers to confidential information or using confidentiality provisions in contracts. There is no specific guidance to assist agencies in correctly classifying what information is confidential. This may lead to inappropriate decisions regarding disclosure that detract from the government's model of an open and transparent government.

It would be helpful for agencies to have further guidance on:

- how to use and interpret confidentiality provisions
- when it is appropriate to include confidentiality provisions within contracts (including documenting the reasons for their use).

The Australian Government is a good reference point, as it has developed some specific guidance on how to identify and treat confidential contract information. Figure 2A describes the Australian Government's Department of Finance Confidentiality Test and identifies the four criteria used to assess confidential information.

**Figure 2A**  
**Australian Government's Department of Finance—Confidentiality Test**

<b>Guidance provided on applying the Confidentiality Test</b>	
<b>Purpose</b>	Confidentiality Test designed to assist entities to determine the appropriate inclusion of confidentiality provisions in contracts.
<b>Criteria</b>	<p>A supplier's commercial information is confidential if it meets all four criteria:</p> <ul style="list-style-type: none"> <li>▪ the information to be protected must be specifically identified</li> <li>▪ the information must be commercially 'sensitive'</li> <li>▪ disclosure would cause unreasonable detriment to the owner of the information or another party</li> <li>▪ the information was provided under an understanding that it would remain confidential.</li> </ul>
<b>Examples</b>	<p>Guidance includes examples of categories of information that:</p> <ul style="list-style-type: none"> <li>▪ may meet the requirements of the Confidentiality Test such as internal costing information, proprietary information, or intellectual property</li> <li>▪ would not generally be considered to be confidential such as performance and financial guarantees, rebates, or payment arrangements.</li> </ul>

*Source: Australian Government's Department of Finance, Buying for the Australian Government, Confidentiality Throughout the Procurement Cycle.*

In most cases, the decision about when to use confidentiality provisions is straightforward. However, there are situations in which affected agencies must apply professional judgement about the appropriate use of confidentiality provisions and the administrative release of information. In these cases, specific guidance, including criteria and examples, will assist agencies in their decision-making.

## Departmental policy and guidance

All five of the departments we audited provide their staff with agency specific procurement guidance that is consistent with the *Queensland Procurement Policy* and the *Procurement Guidelines—Contract Disclosure*. However, the departments do not provide specific guidance to staff responsible for procurement contracts on how and when to use confidentiality provisions. That means there is still a gap in available guidance to help the departments decide when it is appropriate to use confidentiality provisions in contracts.

Departments often rely on legal advice for guidance, particularly for high risk contracts. Three of the five departments had written guidance produced by their legal services divisions. The guidance was general in nature, making departmental staff wary of entering into deeds of confidentiality provided by supplies and service providers. It would be helpful if staff had clearer guidance to refer to first, which would assist their decision-making process. This includes knowing when to seek legal advice and assistance.

While agencies are responsible for their own general administration, including the management of procurement activities, it makes more sense for the Office of the Chief Advisor—Procurement to enhance the whole-of-government guidance to address this gap.

Such guidance could include examples and case studies to illustrate good practice. We found that QFleet, a commercialised business unit of the Department of Housing and Public Works, provides a good example of where it has:

- appropriately assessed the need for confidentiality provisions
- identified and provided a rationale for not disclosing commercial in-confidence information
- appropriately disclosed contract information, inclusive of the rationale for the information omitted.

QFleet has a standing offer arrangement for the provision of motor vehicles. The contract contained a general confidentiality provision but QFleet subsequently identified specific confidential information. It disclosed the required basic details on both QTenders and the Queensland Contracts Directory. Appropriately, it did not disclose detailed, commercial in-confidence pricing information, but did report the reason for non-disclosure of this specific information on the QTenders website.

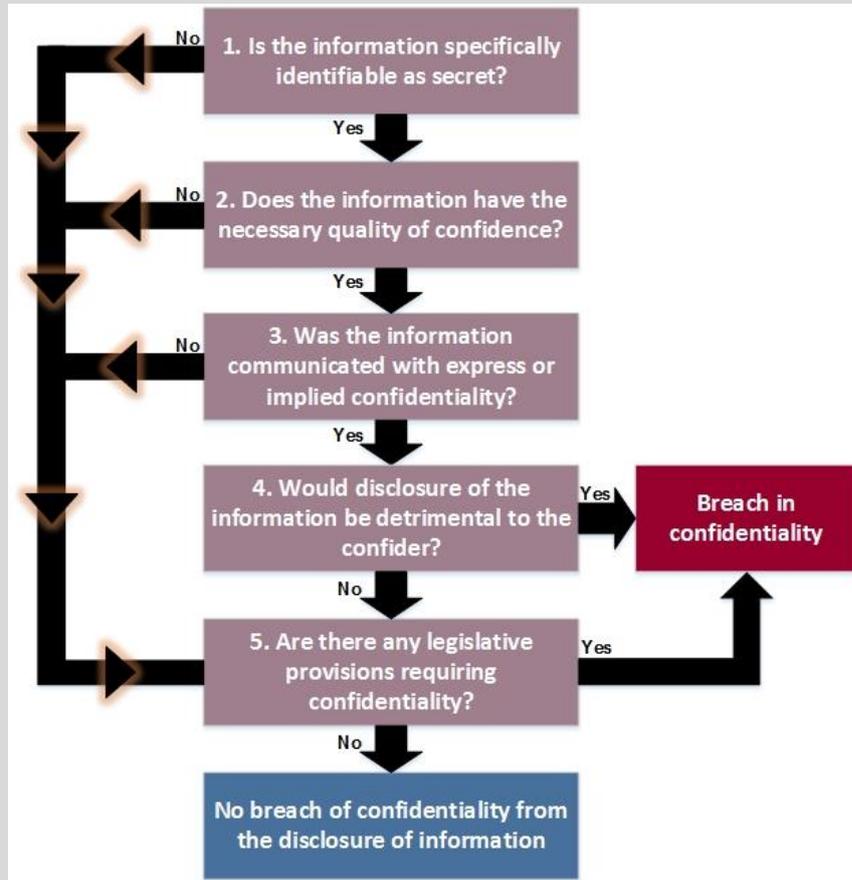
Case study 1 shows how QFleet assessed the contract for the disclosure of information.

### Case study 1

#### Office of the Information Commissioner’s guideline on breach of confidentiality

Where general confidentiality provisions in government contracts prove insufficient, the common law may apply to prevent disclosure of confidential information. Figure CS1 shows where a breach of confidentiality may occur from the disclosure of information.

Figure CS1  
Test for the disclosure of information



QFleet established the Provision of Motor Vehicles contract under the Queensland Government Standing Offer Arrangement Conditions. Even though the contract has a general confidentiality provision, QFleet has appropriately identified that disclosure of price points for individual car manufacturers would cause detriment to the confider, resulting in a breach of confidentiality. Therefore, QFleet has not disclosed this specific information on QTenders. This did not however, prevent the department from disclosing the required contract details on QTenders, inclusive of the total estimated value of the standing offer arrangement.

Source: Queensland Audit Office adapted from Office of the Information Commissioner’s guidelines.

## Standard contract templates

The Office of the Chief Advisor—Procurement and category councils (who oversee strategic procurement activities in relation to groups of related spend) provide standard tender and contract templates for any agency to use. The templates cover four broad procurement categories:

- general goods and services
- information and communication technology
- building, construction and maintenance
- social services.

Having standard templates can assist agencies to develop appropriate contracts. Many templates contain a general confidentiality provision but do not contain any further guidance on how and when it is appropriate to use specific confidentiality provisions.

We examined 30 tender and contract templates across the four procurement categories to determine if they contained any more guidance for agencies in the use of confidentiality provisions.

From the 30 templates, we found:

- Seventeen include a general confidentiality provision requiring parties to keep confidential all confidential information. These provisions generally protect government information rather than supplier information. For example, suppliers must not disclose information belonging to government without prior approval or being required by law.
- Five of the templates include a definition of confidentiality.
- Two contract templates specify that the customer (Queensland Government) may publish information about the contract on the government's contract directory, where required by the *Queensland Procurement Policy*.

Having standard templates is cost-effective and aids consistency in contracts, which can reduce the number of potential anomalies. There is a risk however, that agencies will use the templates as a default without undertaking a case-by-case assessment of when confidentiality provisions are justified, especially specific provisions. This may result in agencies incorrectly using and misinterpreting confidentiality provisions, leading to inappropriate non-disclosure. For example, agencies may use a contract template with a general confidential provision and deem the whole contract as confidential and subject to non-disclosure. Or they may use a general confidentiality provision when the contract requires a specific provision to keep certain intellectual property information confidential.

## Training in the use of confidentiality provisions

Procurement training available to agencies, both at the whole-of-government and agency level, does not specifically cover the appropriate use of confidentiality provisions in contracts. This may lead to incorrect decisions and inconsistent practices. While agencies may not necessarily require formal training on this, further guidance developed by the Office of the Chief Advisor—Procurement, could be used for online learning.

At four of the five departments audited, none of the contract managers we interviewed had undertaken any specific training to assist them in making decisions about the appropriate use of confidentiality provisions in contracts.

At the fifth department, the legal services team developed a confidentiality undertakings guide, available on its internal website. They originally prepared the guide for a confidentiality agreements information session. They provided the training, as a once-off event, to approximately 35 project officers and managers in regional offices.

The Department of Housing and Public Works is responsible for coordinating whole-of-government procurement capability building and training initiatives. It has developed Skills2Procure, a whole-of-government training and development initiative aimed at people in all parts of the procurement process, such as:

- procurement staff
- contract management staff
- staff who help with contract management and procurement
- agency executives.

The Procurement Fundamentals module, part of the Procurement Certification Program, broadly covers disclosure and confidentiality, but does not provide specific guidance on how to appropriately identify and use confidentiality provisions in contracts.

The module states that agencies must carry out procurement processes with integrity, ensuring accountability for outcomes. It specifies that decisions should be transparent and defensible, documenting all stages of decision-making procurement processes.

The Department of Housing and Public Works refers agency staff requiring further information to its legal advisors, and own departmental policies and procedures.

### 3. Disclosing contracts

**This chapter covers whether the five departments examined appropriately disclosed all reportable contracts to the public in accordance with disclosure requirements. Where the departments did not disclose a reportable contract, we looked at whether they had documented an appropriate reason not to.**

#### Introduction

Queensland Government has a pro-disclosure bias unless there are compelling reasons for non-disclosure. The *Queensland Procurement Policy 2017*, Principle 3.3 states that:

Budget sector agencies, large statutory bodies and special purpose vehicles, must publish basic details for awarded contracts valued at \$10 000 and over.

The *Procurement Guidelines—Contract Disclosure* specify that affected agencies must disclose details of all reportable contracts of \$10 000 and over on the QTenders site within 60 days of awarding the contract.

The guidelines also require affected agencies to have processes and procedures to assist procurement officers in making decisions about the disclosure or non-disclosure of contract information. The two main reasons for non-disclosure are where disclosing the information would be a breach of confidence or contrary to public interest.

In the absence of specific guidance on the use of confidentiality provisions in contracts, the *Procurement Guidelines—Contract Disclosure* refers affected agencies to the *Right to Information Act 2009* and *Information Privacy Act 2009* when making decisions about disclosure.

The Right to Information framework outlines five cumulative elements for agencies to use when deciding whether the release of information would constitute a breach of confidence. These include:

- Is the information specifically identifiable as secret?
- Does the information have the necessary quality of confidence?
- Was the information communicated with express or implied confidentiality?
- Did the disclosure constitute an unauthorised use of the confidential information?
- Would disclosure of the information be detrimental to the confider?

All five elements must be satisfied to support non-disclosure of information.

We assessed the:

- completeness of the reportable contracts the five departments disclosed, or the documented rationale for non-disclosure, in accordance with requirements
- appropriateness of the whole-of-government and departmental policy and guidance to assist agencies in making decisions about disclosure or non-disclosure of contracts
- effectiveness of the systems used for disclosing government contracts.

#### Guiding contract disclosure practices

The *Queensland Procurement Policy* and *Procurement Guidelines—Contract Disclosure* demonstrate a commitment to disclosing contract information. They clearly state what contract information agencies must disclose, but there is some confusion about how and where agencies must report the information.

We also noted a lack of awareness of the guideline's specific requirements by some contract managers we interviewed. While the Procurement Fundamentals training covers the basic disclosure requirements, it is mostly procurement staff who undertake the training. In four of the five departments we audited, non-procurement staff, such as contract managers, also make or influence procurement decisions. Many of these staff do not undertake the procurement training. This can lead to inappropriate decisions regarding disclosure that detract from the government's model of an open and transparent government.

The *Procurement Guidelines—Contract Disclosure* says that affected agencies are ultimately accountable for disclosing basic details for awarded contracts of \$10 000 and over unless there is a compelling reason not to. The guidelines state:

- what contract information agencies should disclose
- how they are to disclose it
- records to keep when they do not disclose a contract.

The *Procurement Guidelines—Contract Disclosure* acknowledge that disclosure may not always be legally possible or, in some cases, it may be contrary to public interest. Agencies are encouraged to refer to the *Right to Information Act 2009* to assist them in making decisions about publication or to consult the person in their agency responsible for making decisions under the *Right to Information Act 2009* or the agency's legal advisors, for advice. The lack of specific guidance on when the use of confidentiality provisions in a contract is justification for non-disclosure means that staff sometimes think a general confidentiality clause is sufficient reason.

For example, an agency may consider a project highly sensitive and confidential in its early stages, but that does not necessarily mean that general services associated with that project, such as legal or probity services, meet non-disclosure criteria.

All five of the departments we examined provide their staff with agency specific procurement guidance consistent with the *Queensland Procurement Policy* and the *Procurement Guidelines—Contract Disclosure*. However, in some cases there is a lack of awareness on the specific requirements of the disclosure guidelines.

The Office of the Chief Advisor—Procurement could improve its procurement guidelines and procedures to provide specific guidance to staff on:

- how and where to disclose contract information, including clarifying what systems to use
- when partial or non-disclosure of contract information is justified, including appropriately documented reasons.

## Reporting government contracts

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The departments we audited are not fully reporting contracts in line with disclosure requirements. In some cases, departments are misinterpreting how confidentiality provisions prevent disclosure. Mostly though, we found non-disclosure was more due to incomplete records, multiple systems and, in some cases, a lack of awareness of disclosure requirements.

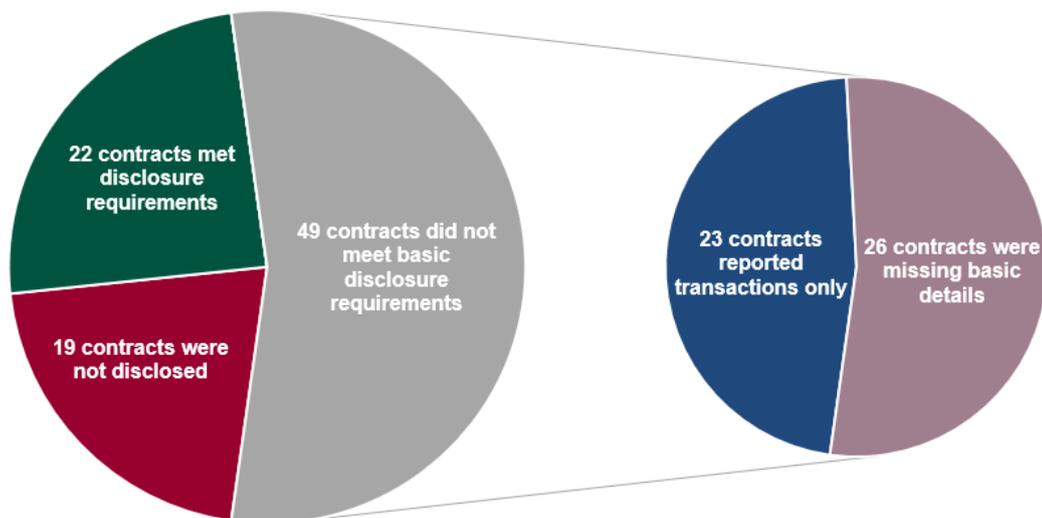
As a result, the Queensland Government does not have a complete record of awarded contracts. The various systems and methods the Office of Chief Advisor—Procurement makes available to agencies for disclosure obscure the transparency of awarded contract data. This means the public cannot easily access accurate data on awarded government contracts valued at \$10 000 or more.

We selected a sample of 90 awarded contracts (17 targeted selection and 73 randomly selected) across the five departments audited to assess compliance with requirements. We assessed whether the departments had disclosed the details in line with the *Procurement Guidelines—Contract Disclosure* and which systems and methods they used to disclose the information.

Only 22, or one quarter, of the 90 contracts, fully met the disclosure requirements. The departments reported the one quarter on QTenders. They had not disclosed 19 contracts at all. They disclosed the remaining 49 contracts, just over half, on one or more systems, but they did not report all necessary information and therefore did not fully meet the disclosure requirements.

Figure 3A shows how many of the 90 contracts were disclosed and met disclosure requirements.

**Figure 3A**  
Breakdown of contract disclosure analysis



Source: Queensland Audit Office.

Of the 49 contracts that did not meet disclosure requirements, 26 did not report all the required basic details. For example, some departments did not disclose the address of the supplier or the date they awarded the contract. For 23 contracts, departments reported individual transactional values rather than the full contract value. This means that the public cannot get a true view of the value of the contract.

For the 49 contracts that did not meet disclosure requirements, all but one did not have documented reasons to support this.

## Systems for disclosing contracts

Over half of the selected contracts we examined appeared on multiple systems. This means there is no complete, accurate and readily accessible record of contract information that meets disclosure requirements. Because of the overlap of disclosures in multiple systems, users cannot aggregate this data without causing duplicate records.

The *Procurement Guidelines—Contract Disclosure* specify that affected agencies must disclose details of all reportable contracts of \$10 000 and over on the QTenders site. Some agencies, however, disclose awarded contract details on the Queensland Contracts Directory instead of, or as well as, QTenders.

## QTenders

When agencies use QTenders for the tendering process, the system populates the information fields required to meet the disclosure obligations in the *Procurement Guidelines—Contract Disclosure*. Agencies cannot delete or purge the record. In the contract sample we selected we found that, where the departments audited had awarded a contract through the QTenders tendering process, they had disclosed all required contract information.

Where departments do not use the tendering process in QTenders, for example using a standing offer arrangement, it is up to departments to ensure that they manually enter the contract details into QTenders. However, in these cases, we found that most of the departments use the Queensland Contracts Directory to fulfil their contract disclosure obligations.

## Queensland Contracts Directory

Agencies can disclose awarded contract information on the Queensland Contracts Directory in two ways. By:

- providing their own contract information using a template provided by the Department of Housing and Public Works
- using transactional data extracted from the Office of the Chief Advisor—Procurement's Insights Data Warehouse.

Agencies who provide their own contract reporting information identified in the *Procurement Guidelines—Contract Disclosure* generally meet the basic details outlined in the guidelines. However, none of the additional information required for contracts greater than \$10 million is available on Queensland Contracts Directory.

The information provided by the Insights Data Warehouse is also often insufficient to meet disclosure requirements. In *Report to Parliament 1: 2016–17—Strategic procurement*, we identified significant deficiencies with the Insights Data Warehouse data. On 23 August 2017, the Office of the Chief Advisor—Procurement informed the Finance and Administration Parliamentary Committee that they were working towards resolving these issues.

Figure 3B shows how the data reported in the Queensland Contracts Directory does not meet the disclosure obligations in the *Procurement Guidelines—Contract Disclosure*.

**Figure 3B**  
**Comparison of Queensland Contracts Directory fields with reporting obligations**

<i>Procurement Guidelines—Contract Disclosure requirements</i>	<i>Information available on Queensland Contracts Directory</i>
<b>Contract value \$10 000 to \$9 999 999—basic details</b>	
The name and address of the agency procuring the contract	Partially—agencies may not disclose address
A description of the goods or services procured	Partially—it is the transaction description
The date of award or contract date	No—only transaction date is disclosed
The value of the contract or standing offer arrangement	No—agencies only disclose individual transaction (excluding GST) unless they manually amend it
The name and address of the successful supplier	Partially—agencies may not disclose address
The procurement method used (only required for contracts of \$500 000 or greater)	Yes (but depends on the agency)
<b>Contract value \$10 million or greater—basic details plus these additional details</b>	
Identifying details (reference information for the offer and contract)	Not available
Number of offers sought	Not available
Evaluation criteria and weightings	Not available
Form of contract	Not available
Deliverables	Not available
Contract milestones	Not available
Contract performance management	Not available

Source: Queensland Audit Office.

Based on records held by the Department of Housing and Public Works, 62 affected agencies (including 32 'core' departments or a commercialised business unit of a department) currently disclose contract information on the Queensland Contracts Directory in conjunction with, or as an alternative to, QTenders. Of these 62 agencies:

- 43 entities provide their own data, using their own methodologies
- 19 of these use the Office of the Chief Advisor—Procurement's Insights Data Warehouse as a source.

Four of the five departments we examined in detail use Insights Data Warehouse data as a source for disclosing contract details. The fifth agency has not reported contract details on the Queensland Contracts Directory since July 2016 (when it upgraded its version of the SAP financial system). This is because the Insights Data Warehouse does not yet map to the new data fields in that department's version of SAP.

The *Procurement Guidelines—Contract Disclosure* guidelines state that reporting transactions is an acceptable form of reporting contract information, but this has led to incomplete information. We found the four departments included in our audit who use the Insights Data Warehouse transactional data to disclose contract details on Queensland Contracts Directory are not meeting the basic requirements for contract disclosure.

The main issues with reporting contracts using this transactional data are:

- transactions rarely reflect the total value of a contract, as departments typically pay suppliers in instalments
- contracts are not disclosed when the periodic payments fall below the \$10 000 threshold—for example, a \$50 000 contract with ten equal payments of \$5 000 per month
- the transaction date is recorded rather than the contract award date
- the name of the procuring agency and supplier are recorded but not their addresses.

The public availability of this transactional information also presents a risk of fraud. There is opportunity for a false billing scam using predictable transaction patterns. For example, submitting a false request to an agency to change vendor bank details.

### Duplicate reporting

In four of the 90 contracts we sampled, we found departments had disclosed contract information on both QTenders (total contract value) and the Queensland Contracts Directory (transactional payments). In these instances, they had duplicated the information. The guidelines state that if an agency discloses the total contract value in QTenders, it does not need to disclose transactions as well.

Departments use transactional data from the Insights Data Warehouse to meet disclosure requirements because they do not have an alternative complete record of all their contracts. When the Department of Housing and Public Works provides each agency with monthly transactions relating to their contracts, each agency must validate the data before the department uploads it onto the Queensland Contracts Directory. Departments report that this can be an onerous and time-consuming task.

### Open Data

The Queensland Contracts Directory and Open Data should report the same data. Every six months, Office of the Chief Advisor—Procurement appends the Queensland Contracts Directory data to a single spreadsheet and uploads it onto the Open Data website on behalf of the rest of the agencies. Based on analysis of Open Data, we found:

- 824 possible duplicate transactions, totalling over \$106 million
- inconsistent date and time notations and formats
- prior year disclosures were significantly lower (up to 10 times less) than in 2016–17
- contracts that were disclosed on departments' contract registers were not on Open Data and vice versa.

From our sample of 90, we found 39 contracts disclosed on the Queensland Contracts Directory did not appear on Open Data, indicating that Open Data is not a complete or accurate record of awarded contracts.

We note that Open Data provides a retrospective snapshot at a set point in time (currently March and September each year). It is possible that contracts disclosed on the Queensland Contracts Directory had not yet been uploaded to the Open Data portal. However, we found that the difference between the award date for all 39 contracts and the most recent update of the Open Data (7 September 2017) was greater than 60 days.

## Recording and tracking contracts

None of the five departments effectively recorded and tracked its contracts to meet disclosure requirements. They do not record enough meaningful information to ensure they have a complete record of all contracts nor appropriate evidence to support a nondisclosure or partial disclosure decision.

*The Procurement Guidelines—Contract Disclosure* require affected agencies to implement a system (for example, a contract register) that provides an effective audit trail for tracking and recording contracts that meet the contract reporting criteria. This includes contracts for which agencies disclose either no or partial information.

The guidelines state that this could include each agency maintaining a central contract register to record, as a minimum:

- contract identification details, for example title and reference number
- the reason for the non-disclosure or partial disclosure decision with appropriate evidence.

We reviewed the five departments' contract registers to ensure that the department records disclosure details as per the requirements of the *Procurement Guidelines—Contract Disclosure*.

Each of the departments had one or more contract registers, mostly kept in decentralised spreadsheets within separate business areas. All the departments' contract registers contained most of the basic fields required but none captured the additional details required for contracts of \$10 million or more.

We found that none of the contract registers had fields to document:

- whether a contract has specific confidentiality provisions
- why a contract was not disclosed or only partially disclosed.

Only one department recorded on its contract register when it had disclosed a contract on QTenders. Therefore, there was no evidence of why departments did not disclose, or only partially disclosed, basic contract details in the contracts we examined. We could not tell whether the reason for non-disclosure was due to confidentiality provisions, or simply a breakdown in process.

We also compared the suppliers listed in the various contract registers from the five departments examined, and the suppliers disclosed on the Queensland Contracts Directory to verify the completeness of both systems.

We found discrepancies between the contract registers and the Queensland Contracts Directory for all five departments, indicating the lack of a complete record of awarded contracts. For example, one department had not recorded in its internal contract registers 2 395 of 3 318 (72.2 per cent) suppliers disclosed on the Queensland Contracts Directory. Likewise, the department did not disclose 1 013 of 1 824 (55.5 per cent) suppliers listed on its contract registers, on the Queensland Contracts Directory. We found similar issues for the other four departments. It was particularly noticeable in departments operating a decentralised procurement model.

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## Appendix A—Full responses from agencies

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As mandated in Section 64 of the *Auditor-General Act 2009*, the Queensland Audit Office gave a copy of this report with a request for comments to:

- Department of the Premier and Cabinet
- Department of Housing and Public Works
- Department of Environment and Science
- Department of Natural Resources, Mines and Energy
- Department of State Development, Manufacturing, Infrastructure and Planning.

The head of these agencies are responsible for the accuracy, fairness and balance of their comments.

This appendix contains their detailed responses to our audit recommendations.

## Comments received from Director-General, Department of the Premier and Cabinet



Department of the  
**Premier and Cabinet**

For reply please quote: *CS/JB – TF/17/16284 – DOC/18/1146*  
Your reference: *2017-9158P*

19 JAN 2018

Mr Brendan Worrall  
Auditor-General  
PO Box 15396  
CITY EAST QLD 4002

Dear Mr Worrall

Thank you for your letter of 14 December 2017 regarding the proposed report to Parliament on the performance audit of confidentiality and disclosure of government contracts.

The department has reviewed the proposed report and I thank you for the opportunity to provide a response.

The department continues to have concerns about some of the conclusions drawn in the report. In particular, the report concludes the incomplete or inaccurate disclosure of awarded contracts is a result of systemic failures of record keeping within the department.

Within the department, the use of specific confidentiality clauses in contracts is rare and is only progressed on advice from legal experts.

The department is committed to providing open and transparent information through the release of information to the public. Notably, the contract information relating to the Department of Premier and Cabinet sample of contracts reviewed as part of this audit was all disclosed on the Queensland Contracts Directory.

In the interest of demonstrating continuous improvement, the department supports the recommendations raised and will continue to review internal data collection and reporting systems to improve the accuracy of contract disclosure data and recording of specific confidentiality provisions.

I attach the table of recommendations, as requested.

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If you would like to discuss this response further, please contact  
Corporate Governance, on telephone

Yours sincerely

A handwritten signature in black ink, appearing to read 'D Stewart', with a long horizontal stroke extending to the right.

Dave Stewart  
**Director-General**

\*Encl

## Responses to recommendations



### Department of the Premier and Cabinet

#### Confidentiality and disclosure of government contracts (Report No. XX: 2017–18)

Response to recommendations provided by Director, Corporate Governance, DPC on 12 January 2018.

Recommendation	Agree / Disagree	Timeframe for implementation (Quarter and year)	Additional comments
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We recommend that the Department of Housing and Public Works in consultation with the Department of the Premier and Cabinet, and other relevant agencies:

2. determine the most appropriate place and process to disclose reportable contracts to achieve the desired outcome of providing a complete and accurate public record of awarded contracts  The enhancements should include	Agree	2 <sup>nd</sup> quarter 2018	
--	-------	------------------------------	--

- reporting all *Procurement Guidelines—Contract Disclosure* minimum reporting requirements (Chapter 3)
- the ability for agencies to record when and why they have used specific confidentiality provisions. (Chapter 3)

We recommend that all agencies:

3. meet all mandatory requirements set out in <i>Procurement Guidelines—Contract Disclosure</i> .  This includes ensuring that	Agree	2 <sup>nd</sup> quarter 2018	
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- agency procurement policies and procedures include these requirements for contract disclosure (Chapter 3)
- disclosure requirements are communicated to and enacted by officers undertaking procurement activities (Chapter 3)

Recommendation	Agree / Disagree	Timeframe for implementation (Quarter and year)	Additional comments
<p>4. improve their contract registers or contract management systems to ensure a complete record of all awarded contracts</p> <p>The enhancements should include</p> <ul style="list-style-type: none"> <li>consolidating all contracts in one record, or where a decentralised model is elected, maintaining this information in a consistent format so that it can be consolidated (Chapter 3)</li> <li>documenting whether a contract has specific confidentiality provisions and the reasons for their use (Chapter 2)</li> <li>documenting reasons for non-disclosure of contracts. (Chapter 2)</li> </ul>	Agree	2 <sup>nd</sup> quarter 2018	

## Comments received from Director-General, Department of Housing and Public Works

Ref: HPW [SystemRefNo]



Queensland  
Government

Department of  
Housing and Public Works

16 JAN 2018

Mr Brendan Worrall  
Auditor-General  
Queensland Audit Office  
PO Box 15396  
City East QLD 4002

*Brendan*

Dear Mr Worrall



Thank you for your letter of 14 December 2017 inviting comment on your proposed performance audit report on confidentiality and disclosure of government contracts.

As you would be aware, the Queensland Government is pursuing a new approach to procurement. This is outlined in the new Queensland Government Procurement Strategy and Queensland Procurement Policy (QPP).

The suggested recommendations, as included within your proposed report, align with this approach including the importance of transparency in procurement as reinforced by the QPP. As such, the Department of Housing and Public Works fully agrees with the proposed recommendations.

Further details about how the recommendations will be implemented are enclosed. For the Department of Housing and Public Works this implementation will have a dual focus:

- engaging with and supporting agencies as part of its whole-of-government procurement role, through the Office of the Chief Advisor – Procurement
- implementing improvements to procurement practice and operations within the department itself.

I hope this information answers your enquiry. If you need any more information or help with this matter, Mr Richard Cassidy, Executive Director, Office of the Chief Advisor – Procurement, can be contacted on [redacted] or email [redacted]

Yours sincerely

Liza Carroll  
Director-General

Encl.

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## Responses to recommendations



### Department of Housing and Public Works

#### Confidentiality and disclosure of government contracts (Report No. XX: 2017–18)

Response to recommendations provided by the Director-General, Department of Housing and Public Works, on DD January 2018.

Recommendation	Agree / Disagree	Timeframe for implementation (Quarter and year)	Additional comments
We recommend that the Department of Housing and Public Works' Office of the Chief Advisor-Procurement:			
<p>1. improve guidance and training available to agencies on the use of confidentiality provisions and disclosure of contracts.</p> <p>The enhancements should include guidance on</p> <ul style="list-style-type: none"> <li>the appropriate use and recording of confidentiality provisions (Chapter 2)</li> <li>when partial or non-disclosure of reportable contracts is appropriate. (Chapter 3)</li> </ul>	Agree	2 <sup>nd</sup> quarter, 2018	<p>Enhancements to the current contract disclosure guidelines are being made. This process will include consultation with the Department of the Premier and Cabinet, the Queensland Government Procurement Committee and other relevant agencies.</p> <p>New guidance on the use of confidentiality provisions will be developed and issued.</p> <p>Procurement training curricula will also be revised.</p>
We recommend that the Department of Housing and Public Works in consultation with the Department of the Premier and Cabinet, and other relevant agencies:			
<p>2. determine the most appropriate place and process to disclose reportable contracts to achieve the desired outcome of providing a complete and accurate public record of awarded contracts</p> <p>The enhancements should include</p> <ul style="list-style-type: none"> <li>reporting all <i>Procurement Guidelines—Contract Disclosure</i> minimum reporting requirements (Chapter 3)</li> <li>the ability for agencies to record when and why they have used specific confidentiality provisions. (Chapter 3)</li> </ul>	Agree	2 <sup>nd</sup> quarter 2018	<p>These determinations and enhancements will occur as part of implementing Recommendation 1.</p> <p>As part of consultation described in Recommendation 1 above, enhancements to procurement systems will also be made to better support the contract disclosure function. This is a longer-term initiative and will occur as part of a systems review project currently being scoped by the Office of the Chief Advisor-Procurement.</p>

Recommendation	Agree / Disagree	Timeframe for implementation (Quarter and year)	Additional comments
We recommend that all agencies:			
<p>3. meet all mandatory requirements set out in <i>Procurement Guidelines—Contract Disclosure</i>.</p> <p>This includes ensuring that</p> <ul style="list-style-type: none"> <li>agency procurement policies and procedures include these requirements for contract disclosure (Chapter 3)</li> <li>disclosure requirements are communicated to and enacted by officers undertaking procurement activities (Chapter 3)</li> </ul>	Agree	3rd quarter 2018	<p>The Department of Housing and Public Works will both:</p> <ul style="list-style-type: none"> <li>review its policies and procedures to implement the enhanced contract disclosure guidelines</li> <li>improve its contract registers and systems to better support the disclosure function.</li> </ul> <p>This work will be overseight by the department's Strategic Procurement Committee.</p> <p>Consistent with its whole-of-government role, the Office of the Chief Advisor – Procurement will provide support to all government agencies in implementing this recommendation (noting that ultimate implementation responsibility for this recommendation rests with individual agencies).</p>
<p>4. improve their contract registers or contract management systems to ensure a complete record of all awarded contracts</p> <p>The enhancements should include</p> <ul style="list-style-type: none"> <li>consolidating all contracts in one record, or where a decentralised model is elected, maintaining this information in a consistent format so that it can be consolidated (Chapter 3)</li> <li>documenting whether a contract has specific confidentiality provisions and the reasons for their use (Chapter 2)</li> <li>documenting reasons for non-disclosure of contracts. (Chapter 2)</li> </ul>	Agree	3 <sup>rd</sup> quarter 2018	<p>This will occur as part of implementing Recommendation 3.</p>

## Comments received from Director-General, Department of State Development, Manufacturing, Infrastructure and Planning



Department of  
**State Development,  
Manufacturing,  
Infrastructure and Planning**

Our ref: DGC17/1533  
Your ref: 2017-9258P  
David Toma – 3149 6050

22 JAN 2018

Mr Brendan Worrall  
Auditor-General  
PO Box 15396  
City East QLD 4002

Dear Mr Worrall

Thank you for your letter of 14 December 2017 about the proposed report to Parliament for the confidentiality and disclosure of government contracts performance audit.

I am pleased the department has had the opportunity to participate in consultation during the audit and consider the findings and recommendations of the proposed report. The department agrees with the report's recommendations and has enclosed its response to the recommendations for agencies.

The Department of State Development, Manufacturing, Infrastructure and Planning (the department) proposes to implement the recommendations for agencies by enhancing the department's existing procurement contracts register and reviewing procedures and policies to ensure consistency with the mandatory requirements of the contract disclosure guidelines. This will occur as part of the department's existing review in preparation for the full implementation of the new Queensland Government Procurement Policy. I welcome the opportunity to make these improvements, and in doing so, support the Government to achieve its goals to be transparent and accountable.

If you require any further information, please contact Ms Kris Stone-Tolcher, Executive Director, Corporate Services, Department of State Development, Manufacturing, Infrastructure and Planning, on [redacted] or [redacted] who will be pleased to assist.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Michael Schaumburg".

Michael Schaumburg  
Director-General

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## Responses to recommendations



### Department of State Development, Manufacturing, Infrastructure and Planning Confidentiality and disclosure of government contracts

Recommendation	Agree / Disagree	Timeframe for implementation (Quarter and year)	Additional comments
We recommend that all agencies:			
3. meet all mandatory requirements set out in <i>Procurement Guidelines—Contract Disclosure</i> .  This includes ensuring that <ul style="list-style-type: none"> <li>agency procurement policies and procedures include these requirements for contract disclosure (Chapter 3)</li> <li>disclosure requirements are communicated to and enacted by officers undertaking procurement activities (Chapter 3)</li> </ul>	Agree	Q4 2017-18	Procedures will be reviewed to ensure consistency with mandatory requirements.
4. improve their contract registers or contract management systems to ensure a complete record of all awarded contracts.  The enhancements should include <ul style="list-style-type: none"> <li>consolidating all contracts in one record, or where a decentralised model is elected, maintaining this information in a consistent format so that it can be consolidated (Chapter 3)</li> <li>documenting whether a contract has specific confidentiality provisions and the reasons for their use (Chapter 2)</li> <li>documenting reasons for non-disclosure of contracts. (Chapter 2)</li> </ul>	Agree	Q3 2017-18	The department's existing centralised procurement contracts register will be updated to allow for information concerning the use of specific confidentiality provisions and reasons for non-disclosure of contracts to be documented.

## Comments received from Director-General, Department of Environment and Science



Department of  
**Environment and Science**

Ref: CTS 32872/17  
You Ref: 2017-9158P

22 JAN 2018

Mr Brendan Worrall  
Auditor-General  
Queensland Audit Office  
PO Box 15396  
CITY EAST QLD 4002

Dear Mr Worrall

Thank you for your letter of 14 December 2017 to the Director-General of the former Department of Environment and Heritage Protection regarding the Queensland Audit Office's (QAO) performance audit on confidentiality and disclosure of government contracts.

I am pleased to advise that the Department of Environment and Science (the department) agrees with, and supports, the final recommendations proposed in the QAO report and has no further inclusions or feedback to provide.

The department welcomes the opportunity to work with the respective lead agencies in implementing all QAO recommendations, as relevant for this department.

Should your officers require any further information, they may contact Ms Maree Stephens, Manager, Procurement Services, Corporate Services of the department by email at or on telephone

Yours sincerely

A handwritten signature in black ink, appearing to read "Jamie Merrick".

Jamie Merrick  
**Director-General**

22/1/18

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## Responses to recommendations



### Department of Environment and Science

#### Confidentiality and disclosure of government contracts (Report No. XX: 2017–18)

Response to recommendations provided by Manager, Procurement Services

Recommendation	Agree / Disagree	Timeframe for implementation (Quarter and year)	Additional comments
We recommend that all agencies:			
<p>3. meet all mandatory requirements set out in <i>Procurement Guidelines—Contract Disclosure</i>.</p> <p>This includes ensuring that</p> <ul style="list-style-type: none"> <li>agency procurement policies and procedures include these requirements for contract disclosure (Chapter 3)</li> <li>disclosure requirements are communicated to and enacted by officers undertaking procurement activities (Chapter 3)</li> </ul>	Agree	Q1 – 2018/2019 (July – September 2018)	Subject to DHPW release of the updated Disclosure Guidelines.
<p>4. improve their contract registers or contract management systems to ensure a complete record of all awarded contracts</p> <p>The enhancements should include</p> <ul style="list-style-type: none"> <li>consolidating all contracts in one record, or where a decentralised model is elected, maintaining this information in a consistent format so that it can be consolidated (Chapter 3)</li> <li>documenting whether a contract has specific confidentiality provisions and the reasons for their use (Chapter 2)</li> <li>documenting reasons for non-disclosure of contracts. (Chapter 2)</li> </ul>	Agree	Q1 – 2018/2019 (July-September 2018)	Subject to MoG outcomes and future of B&CP agency arrangements. With having decentralised procurement model how to best capture the local procurement/contract activities in the consistent format is currently being worked through.

## Comments received from Director-General, Department of Natural Resources, Mines and Energy

Ref CTS 32859/17



22 JAN 2018

Mr Brendan Worrall  
Auditor-General  
Queensland Audit Office  
PO Box 15396  
CITY EAST QLD 4002

Dear Mr Worrall

Thank you for your letter of 14 December 2017 concerning the performance audit on confidentiality and disclosure of government contracts.

The department agrees with and supports the final recommendations proposed in the report and have no further inclusions or feedback to provide.

The department welcomes the opportunity to work with the respective lead agencies in implementing all the Queensland Audit Office recommendations as relevant for this department.

Should you have any further enquiries, please contact Ms Maree Stephens, Manager, Procurement Services on

Yours sincerely

A handwritten signature in blue ink, appearing to read "James Purtill".

**James Purtill**  
Director-General

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## Responses to recommendations



### Department of Natural Resources, Mines and Energy

#### Confidentiality and disclosure of government contracts (Report No. XX: 2017–18)

Response to recommendations provided by Manager, Procurement Services

Recommendation	Agree / Disagree	Timeframe for implementation (Quarter and year)	Additional comments
We recommend that all agencies:			
3. meet all mandatory requirements set out in <i>Procurement Guidelines—Contract Disclosure</i> .  This includes ensuring that <ul style="list-style-type: none"> <li>agency procurement policies and procedures include these requirements for contract disclosure (Chapter 3)</li> <li>disclosure requirements are communicated to and enacted by officers undertaking procurement activities (Chapter 3)</li> </ul>	Agree	Q1 – 2018/2019 (July – September 2018)	Subject to DHPW release of the updated Disclosure Guidelines.
4. improve their contract registers or contract management systems to ensure a complete record of all awarded contracts.  The enhancements should include <ul style="list-style-type: none"> <li>consolidating all contracts in one record, or where a decentralised model is elected, maintaining this information in a consistent format so that it can be consolidated (Chapter 3)</li> <li>documenting whether a contract has specific confidentiality provisions and the reasons for their use (Chapter 2)</li> <li>documenting reasons for non-disclosure of contracts. (Chapter 2)</li> </ul>	Agree	Q1 – 2018/2019 (July-September 2018)	Subject to MoG outcomes and future of B&CP agency arrangements. With having decentralised procurement model how to best capture the local procurement/contract activities in the consistent format is currently being worked through.

## Appendix B—Audit objectives and methods

The objective of the audit was to assess the extent and appropriateness of the use of confidentiality provisions in Queensland Government contracts.

We addressed the objective through the following sub-objectives and lines of inquiry.

**Figure B1**  
**Sub-objectives and lines of inquiry**

Sub-objectives		Lines of inquiry	
1	There is adequate guidance which sets out when it is appropriate for departments to use confidentiality provisions in government contracts.	1.1	Departments are equipped with adequate guidance and tools to make informed and transparent decisions about when to use confidentiality provisions in contracts.
2	Departments appropriately used confidentiality provisions in their contracts in accordance with governance frameworks.	2.1	Departments appropriately documented the reasons for using confidentiality provisions and the agreement for the information to remain confidential.
		2.2	Departments effectively monitor the use of confidentiality provisions and maintain contract information in accordance with reporting requirements.

Source: Queensland Audit Office.

### Entities subject to this audit

The following entities are subject to the audit:

- Department of the Premier and Cabinet
- Department of Housing and Public Works
- Department of Environment and Heritage Protection
- Department of Natural Resources and Mines
- Department of State Development.

### Audit process

We conducted this audit in accordance with the Auditor-General of Queensland Auditing standards, which incorporate the Australian Auditing and Assurance Standards.

We conducted it between March 2017 and September 2017. The audit consisted of:

- interviews with officials from
  - Department of the Premier and Cabinet
  - Department of Housing and Public Works
  - Department of Environment and Heritage Protection
  - Department of Natural Resources and Mines
  - Department of State Development
  - Department of Tourism, Major Events, Small Business and the Commonwealth Games
  - Crown Law
  - Office of the Information Commissioner
- analysis of documents, policies, plans, reports, guidelines, and manuals
- analysis of departmental contract registers and contract disclosure systems
- analysis of a sample of contracts from
  - Department of the Premier and Cabinet
  - Department of Housing and Public Works
  - Department of Environment and Heritage Protection
  - Department of Natural Resources and Mines
  - Department of State Development.

## Our sampling approach for departments' contracts

We selected a random sample of 73 contracts from the five departments' contract registers and an additional 17 targeted sample for extensive analysis. The sample size is in line with the Queensland Audit Office's sampling policy. Interviews with departmental staff informed selection of the targeted sample. The sample was representative to the size (by number of contracts identified) of the departments audited.

Figure B2 shows the number of contracts selected in total from each department.

**Figure B2**  
Sample size for each department

Department	Sample size
Department of the Premier and Cabinet	13
Department of Housing and Public Works	39
Department of Environment and Heritage Protection	9
Department of Natural Resources and Mines	11
Department of State Development	18
<b>Total</b>	<b>90</b>

Source: Queensland Audit Office.

## Appendix C—Reportable contracts

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The *Procurement Guidelines—Contract Disclosure* provide the following examples of what are and are not reportable contracts.

Reportable contracts include:

- purchase/procurement of general goods and services
- purchase/procurement of contractor and consultancy services
- procurement of capital works (including buildings and infrastructure)
- establishment of Standing Offer Arrangements and panel arrangements
- contracts made under Standing Offer Arrangements (for example, by way of a purchase order issued under the Standing Offer Arrangement)
- corporate card transactions (excluding payments to corporate card providers, for example, administrative fees).

Contracts that are not reportable include:

- procurement of real property (including interests in real property such as leases/tenancies)
- grants (whether in the form of a contract or a conditional gift)
- intragovernmental (within Queensland Government) transactions, for example, procurement with commercialised government business units
- loans and investments
- payments to employees (whether permanent or temporary) of affected agencies, including contracts issued under the *Public Service Act 2008*
- lists of suppliers established following a pre-qualification process
- sponsorship payments
- milestone payments to suppliers, where the contract (including total contract value) has already been disclosed
- payments received by affected agencies for the disposal of assets or sale of land
- incidental transactions in connection with a contract for goods or services not related to the contract payment (for example, where a refund of administrative fees is necessary to correct an overcharging error)
- payments to corporate card providers for amounts due (for example, administrative fees)
- periodic payments (for example, monthly invoices) under contracts already disclosed. This would include for example, invoices in payment of utilities such as water and electricity
- payments established in law for which there is no discretion, for example, taxation payments and payments to local government rates.

# Appendix D—Public Accounts Committee report recommendations

The Legislative Assembly of Queensland’s Public Accounts Committee, released *Report 61, Commercial-in-Confidence Arrangements* in November 2002. It recommended that public sector entities develop and adopt guidelines in relation to commercial in-confidence consistent with the following principles in Figure D1.

**Figure D1**  
*Report 61 Commercial-in-Confidence Arrangements recommendations*

Theme	Principles
Information should be publicly available	<ul style="list-style-type: none"> <li>Information should be made public unless there is a justifiable commercial or legal reason for it not to be.</li> <li>Contracts that include commercial in-confidence provisions should be publicly identified together with a specification of which provisions have been withheld.</li> <li>The party requesting commercial in-confidence should be identified, should justify that position and demonstrate how its commercial interests may be harmed by disclosure.</li> <li>Taxpayers should not have to rely on provisions in legislation to access information for the purpose of scrutinising government financial management.</li> </ul>
Accountability and public interest should prevail	<ul style="list-style-type: none"> <li>The information needs for public accountability and public interest should take precedence.</li> <li>Agencies should report on how the public interest is served when information is classified as commercial in-confidence.</li> <li>Agencies should identify alternative accountability mechanisms if information is classified as commercial in-confidence.</li> </ul>
Commercial sensitivity of information decays with time	<ul style="list-style-type: none"> <li>Agencies should develop a protocol for a method of public disclosure and a time period within which this must take place.</li> <li>The duration of commercial in-confidence provisions should be explicitly considered when a contract is being written.</li> <li>The time period that the information is deemed commercial in-confidence should be disclosed together with an explanation for the time period chosen.</li> <li>Contracts that are commercial in-confidence should be subject to regular review to ensure the conditions justifying confidentiality remain valid.</li> </ul>
Commercial in-confidence clauses should be specifically tailored for each contract	<ul style="list-style-type: none"> <li>Confidentiality should be limited to essential items. The use of widely drawn standard clauses is discouraged. Instead, the focus should be on drafting tailor made clauses that are specific to the contract and to the commercially sensitive information to be protected.</li> <li>Separate confidentiality clauses, appropriately identified, should be inserted in contracts for information which the public sector agency required to be confidential and for information which the private sector requires to be confidential.</li> </ul>
There is a cost to maintaining confidentiality	<ul style="list-style-type: none"> <li>Agencies need to consider the ongoing cost and the procedural issues involved in maintaining the confidentiality of information.</li> </ul>

Source: *Legislative Assembly of Queensland’s Public Accounts Committee, Report 61, Commercial-in-Confidence Arrangements, November 2002.*

# Auditor-General reports to parliament

## Reports tabled in 2017–18

Number	Title	Date tabled in Legislative Assembly
1.	Follow-up of Report 15: 2013–14 Environmental regulation of the resources and waste industries	September 2017
2.	Managing the mental health of Queensland Police employees	October 2017
3.	Rail and ports: 2016–17 results of financial audits	December 2017
4.	Integrated transport planning	December 2017
5.	Water: 2016–17 results of financial audits	December 2017
6.	Fraud risk management	February 2018
7.	Health: 2016–17 results of financial audits	February 2018
8.	Confidentiality and disclosure of government contracts	February 2018

## Contact the Queensland Audit Office

